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HIGH COURT OF CHHATTISGARH, BILASPUR

Division Bench: Hon'ble Shri Justice L.C. Bhadoo &
Hon'ble Shri Justice Sunil Kumar Sinha, JJ.

Criminal Appeal No. 922 of 2001

Dashrath & 3 others

Versus

State of Chhattisgarh

JUDGMENT

Judgment for consideration

Sd/-
Sunil Kumar Sinha
Judge

Hon'ble Shri Justice L.C. Bhadoo, J

Sd/-
L.C.BHADOO
Judge

Post for Judgment: 8 .08.2007

sd/-
Judge
7 .08.2007

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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 922 of 2001

APPELLANTS

1 Dashrath aged 52 year

2 Gandhi aged 35 years

3 Julius aged 33 years

All sons of late Sahasram
Suryavanshi.

4 Ramswaroop son of Dashrath aged 17
years.

All residents of Village Nirtu, P.S.
Sarkanda, Tashil and Distt. Bilaspur
(C.G.)

Versus

RESPONDENT

State of Chhattisgarh, Through : P.S.
Sarkanda, Distt. Bilaspur (C.G.)

(Appeal under Section 374 (2) of Cr.P.C.)

Appearance:

Ms. Sofia Khan, counsel for the appellants.

Shri Ashish Shukla, Additional Public Prosecutor for the
State.

(DIVISION BENCH)

**HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI SUNIL KUMAR SINHA, JJ.**

JUDGMENT
(8.08.2007)

Following judgment of the Court was delivered by

Sunil Kumar Sinha, J.

(1) This appeal is directed against the judgment of conviction
and order of sentences dated 26th July, 2001 passed by the 5th
Additional Sessions Judge, Bilaspur in Sessions Trial No.

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466/2000, whereby the appellants were convicted u/ss. 323/34, 325/34 & 302/34 I.P.C. and sentenced to undergo R.I. for 3 months and fine of Rs.100/-, R.I. for 3 years and fine of Rs.1,000/- & imprisonment for life and fine of Rs.5,000/- with default sentences and with a further direction to run the sentences consecutively.

(2) During the pendency of this appeal, appellant Julius (appellant No.3) died on 24.09.2003 and no steps have been taken for his substitution, therefore, the appeal filed on behalf of this appellant stands abated.

(3) The case of the prosecution is that appellant Gandhi had taken a loan of Rs.300/- from the father of the complainant- Vinod Kumar (P.W.-1) one year prior to the date of incident, which took place on 29.8.2000. On the said day at about 2.00 p.m., appellant-Gandhi, armed with *Lathi*, came in front of house of the complainant and started abusing his father by using filthy language. He was calling him for fight. The family members did not come out from the house, on which, he returned back. Thereafter, at about 5.00 p.m. when Ramkisun (father of the complainant since deceased) was returning from his *Badi*, on the way, he was stopped by appellants Gandhi, Julius, Dashrath and Ramswaroop. They were armed with *Lathis*. They started beating the deceased, who fell down on the ground. When his sons, complainant- Vinod Kumar (P.W.-1), Laxmi Prasad (P.W.-2) and wife Krishna Bai (P.W.-10) went for his rescue, they were also assaulted by the accused persons. The incident was witnessed by Shiv Kumar Sarthi (P.W.-12), Ram Kumar Yadav (P.W.-13), Ramesh Yadav, Kamta Yadav and Pandu etc. On account of injuries, Ramkisun became unconscious. He was taken to the police station and to District Hospital, Bilaspur, where he died on the same day at about 9.30 p.m. A report was lodged in police station, Sarkanda under Ex.- P/1 and the matter was taken up for investigation.

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(4) During the course of investigation, the dead body of the deceased was sent for post-mortem, which was conducted by Dr. T.S. Shyam (P.W.-4), who noticed the following injuries and prepared his report Ex.-P/3:-

- (i) Swelling on the right front side of the head;
- (ii) Swelling on the left wrist;
- (iii) An incised wound on the lower lip in size of 1 ½ cm. x 1 cm. reddish in colour;
- (iv) A depressed wound, reddish in colour on the right thigh in size of 2 ½ inch x ½ inch;
- (v) Swelling on the back portion on the head.

According to him, all the injuries were antemortem. On the internal examination, clotted blood was found in the frontal region (right side) and on right parietal and left parietal region. There was a fracture in the scalp bone which extended from right fronto parietal region to left parietal region. In between 2 portions of brain, clotted and normal blood was found in huge quantity. There was a fracture on left radius bone. According to him, the cause of death was shock and intra cranial hemorrhage as a result of fracture of skull bone. The other injured persons namely Krishna Bai (P.W.-10), Vinod Kumar (P.W.-1) and Laxmi Prasad (P.W.-3) were also sent for medical examination. Krishna Bai was examined by Dr. (Smt.) M. Sen (P.W.3), who noticed 3 external injuries and advised X-ray for injuries No. 1 & 2, about injury No.3, she gave her opinion that it was simple injury caused by rough object. Her injury report is Ex.-P/2. Vinod Kumar (P.W.-1) was examined by Dr. K.K. Shukla (P.W.-5), who found 2 external injuries on his body. Injury No.1 was simple in nature and for injury No. 2 he advised X-ray examination. The injury report of Vinod Kumr is Ex.-P/5. He had also examined Laxmi Prasad (P.W.-2) and prepared his report under Ex.-P/7, according to which, Laxmi Prasad has also received 2 external injuries for which X-ray examination was advised. On further examination, it was found that there was a fracture of first meta carpel bone of Laxmi Prasad. The X-ray report was collected

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under Ex.-P/10 and X-ray plate was collected as Ex.-P/11. No bony injuries were detected after X-ray examination of injuries of Krishna Bai (P.W.-10) and Vinod Kumar (P.W.-1). The reports to this effect were prepared by Dr. R. Jitpure (P.W.-8) under Ex.-P/12 to Ex.-P/15. *Danda* and *Lathi* were seized from the possession of appellant- Gandhi & Julius under Ex.-P/17 & Ex.-P/18. Site plan was prepared under Ex.-P/17-A. Blood stained and plain soil were seized from the place of occurrence under Ex.-P/18. A *Danda* was seized from the possession of Ramswaroop under Ex.-P/19, a *Lathi* and cloth was seized from the possession of Dashrath under Ex.-P/20. Some clothes were seized from the possession of Laxmi Prasad under Ex.-P/21.

(5) After completion of usual investigation, charge-sheet was filed in the Court of Judicial Magistrate, First Class, Bilaspur, who in turn committed the case to the Court of Sessions Judge, Bilaspur, from where it was received on transfer by the 5th Additional Sessions Judge, Bilaspur, who conducted the trial.

(6) The prosecution, in order to established their case, examined 14 witnesses, the statement of accused persons were recorded u/s 313 Cr.P.C., who denied the material appearing against them in the prosecution evidence. Accused- Dashrath, Gandhi and Ramswaroop took plea that they have been falsely implicated and they were not present at the place of occurrence, whereas accused- Julius stated that in fact, at about 5.00 p.m. on the said date, he was assaulted by persons of complainant party namely Laxmi Prasad, Vinod Kumar, Ram Prasad, Krishna Bai, Laxmi Bai, Shiv Kumar and Ramkisun (deceased), who were armed with *Tabal* & *Lathi*. He received injuries on his head, left hand and also on temporal region. There was a fracture in his hand and 12 stitches were put on the head injury. He had also gone to lodge a report at about 6.30 p.m. in the same police station and was sent by police for medical examination to Dharam Hospital. However, no defence witness was examined by the accused persons.

(7) It is on these facts and circumstances, the learned Additional Sessions Judge, convicted and sentenced the appellants as aforementioned, against which they have preferred this criminal appeal.

(8) Referring to the decision rendered in the matter of **Balwan Singh Vs. State of Haryana, 2005 CG. Cr.J. 205 (SC)**, learned counsel for the appellants argued that in this case, accused-Julus also received serious injuries and was sent for medical examination by the police but the injuries sustained by him have not been explained by the prosecution. Therefore, the entire story of the prosecution should be disbelieved. She secondly argued that even if the case of prosecution is examined independently, it appears to be a case of free fight between two groups, therefore, each one of the accused must be held responsible for his own conduct and action.

(9) On the other hand, learned counsel for the State opposed these arguments and supported the judgment of conviction and order of sentences passed by the trial Court.

(10) So far as non-explanation of injury(s) caused to the accused(s) are concerned, the Apex Court held in the matter of **State of Gujrat Vs. Bai Fatima and another, (1975) 2 SCC 7**, that when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

- (1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self-defence.
- (2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.
- (3) It does not affect the prosecution case at all.

(11) Further in catena of decisions, it has been held by the Apex Court that if it is shown that accused sustained injuries in the course of the occurrence, prosecution has duty to offer an explanation so as to satisfy the court about the circumstances under which the injuries were caused. If the prosecution fails to do so, it may mean that:

- (1) the prosecution has suppressed the genesis and development and truth of the occurrence and has not presented the true version; or
- (2) The witnesses who denied the presence of such injuries are lying in regard to a material part of the occurrence and therefore cannot be believed; or
- (3) The defence version which explains the injuries is rendered probable, so as to throw doubt on the truth of the prosecution case. These inferences may not be drawn if (a) the injuries are not serious; or (b) if the evidence as a whole is so cogent, clear, consistent, credit worthy that it outweighs the effect of omission on the part of prosecution witnesses to explain the injuries.

(12) In order to appreciate first argument regarding non-explanation^{of} injuries, firstly, it has to be examined as to whether it has been brought on record that accused-Julus had received injuries in the occurrence. In this regard, no injury report of the said accused has been produced on record. It only comes in Para-33 of cross-examination of the Investigation Officer Emil Lakra (P.W.-15) that on the said date, accused Julius had also received injuries on his head and body and was sent for medical examination and on his report, a separate charge-sheet was filed in the Court of Judicial Magistrate, First Class, Bilaspur against the complainant Vinod Kumar, Ram Kumar and Laxmi Bai. It has also come in the evidence of P.W.-1 Vinod Kumar, in Para-27, that accused Julius had also received injury on his head but he has denied the suggestions that it was caused by them. He

has said that his father may have caused injury to him in his defence. Except this nothing has been brought on record in this regard. Whether those injuries were serious injuries or they were superficial injuries, whether the so called injuries were visible or not, all these facts are not there on record and the argument has been advanced on the basis of such admission of the Investigation Officer as also P.W.-1 and the version made by accused in his defence. If the evidence regarding injuries sustained by the accused are not brought on record, their cannot be a search for their explanation. In the matter of *Balwan Singh* (supra), which the learned counsel for the appellants has relied, three accused/appellants had received 7, 5 & 5 injuries. The perusal of the judgment in Para-6 would show that those injuries were of measurable size and were serious injuries and the material to this effect was there on record as the Doctor (P.W.-6), who had examined them, had proved the above injuries of accused A1 to A3.

(13) In the present case, as stated above, no injury report of the accused has been produced and proved, therefore, the said judgment is distinguishable on this point and it would not be helpful to the appellants. It is noteworthy that even the charge-sheet or other evidence or relevant material of the case pending against the complainant party were not produced by the defence, so as to find out as to whether the so called injuries sustained by the accused was received in the same occurrence or was received in some other occurrence and, in fact, there were such injuries which would have required an explanation by the prosecution, in light of the judgments referred to above.

(14) Therefore, in view of the above facts and circumstances, the first argument advanced by learned counsel for the appellants that the injuries sustained by accused Julius has not been explained by the prosecution, therefore, the entire version of the prosecution should be disbelieved cannot be accepted because no evidence to this effect has been brought on record as

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to what kind of injuries were sustained by accused and whether the said injuries were received in the same occurrence.

(15) So far as second argument is concerned, Vinod Kumar (P.W.-1) has deposed that on 29.8.2000 at about 5.00 p.m., he was in his house. His father Ramkisun (deceased) had gone to *Badi*, which is at a distance of 150 metres and is situated behind the house of Dashrath. His father had gone all alone. At that time, Shiv Kumar, Sarthi and Ram Kumar Yadav come to his house and told him that his father is being beaten. On this, he alongwith his mother and brother Laxmi Prasad went there. He saw that his father was lying on the ground and Dashrath, Julius, Gandhi and Ramswaroop were assaulting him with *Lathi* and rod. He specifically stated that Ramswaroop was holding a rod and other three accused persons were holding *Lathis*. When they intervened, they were beaten by Dashrath, Julius & Gandhi.

(16) In the cross-examination, he has denied the suggestion, vide Para-24, that they had also beaten the accused persons and they all were armed with *Lathis*. However, he deposed that he can not tell as to who assault his father with *Lathi* at which part of the body. He has denied his police statement (Ex.-D/1) to this extent that he had not deposed that "they had gone to the place of occurrence taking *Lathis* in their hands", and if such version is recorded, he cannot tell any reason for the same. The evidence of this witness regarding reaching to the spot on hue and cry appears to be correct but evidence that they were un-armed, on the face of his police statement, is an omission.

(17) Laxmi Prasad (P.W.-2) has deposed that Parwati and Sushila told him that his father is being beaten, thereafter, he along with his mother and brother Vinod Kumar went to the place of occurrence. He saw that Dashrath, Gandhi & Julius were armed with *Lathis* and Ramswaroop was armed with a rod and all of them were assaulting his father. His father has fell down of the ground. When they intervened, the accused persons Gandhi,

Dashrath and Julus had also assaulted them on account of which he received injuries on his both wrists. He has also deposed that when he reached to the spot, he saw that his father was lying on the ground and accused persons were beating him. He has denied this fact that when he along with his brother and mother had gone to the place of occurrence, they were also carrying *Lathis* and if such fact is mentioned in his police statement (Ex.-D/2), he cannot tell any reason for the same. Therefore, he has given almost same kind of evidence as has been given by his brother Vinod Kumar (P.W.-1) but has made an omission that they were also carrying *Lathis* when they had gone to the place of occurrence to rescue his father Ramkisun.

(18) Ram Prasad (P.W.-6) is another son of the deceased Ramkisun. He has also given similar evidence as has been given by his two brothers. In Para-2 of his deposition he has clearly stated that when he reached to the spot, he saw that accused Gandhi, Dashrath, Julus and Ramswaroop were beating his father. Gandhi, Dashrath and Julus were armed with *Danda* and Ramswaroop was armed with a rod. In Para-11 of his cross-examination, he too has denied that while giving police statement (Ex.-D/3), he had not said that they have also used *Lathis* in their defence and if such statement is recorded, he cannot tell the reason for the same.

(19) Krishna Bai (P.W.-10) has deposed that at about 5.00 p.m., Shiv Kumar (P.W.-12) and Ram Kumar (P.W.-13) told them that the deceased was being beaten by Gandhi, Julus etc. On hearing this, when she reached to the place of occurrence, she saw that her husband was beating accused Julus by *Lathi* and when he was doing so, accused Gandhi, from the back side, assaulted on the head of her husband by *Lathi*, on which he fell down on the ground, thereafter, accused Julus, Gandhi, Dashrath and Ramswaroop all started beating her husband. Ramswaroop was carrying a rod and other accused persons were carrying *Dandas*. While making intervention, she was also



assaulted. Vide Para-6 of her deposition, she has stated that thereafter, when her sons namely Laxmi Prasad and Vinod Kumar reached there, they were also assaulted by accused persons. There are some omission in her evidence and she has also denied that when after hearing hue and cry her sons had gone there, they were holding *Lathis* and if such statement is there in the police case diary, she cannot tell any reason for the same. She has also stated that she has told to the police that firstly her husband had assaulted accused Julius and if this fact is also not there in the case diary statement, she cannot tell any reason for the same also.

(20) Shiv Kumar has been examined as P.W.-12. He has deposed vide Para-3 that on fateful day Ramkisun was advising the accused persons for not quarrelling and on this, some talk was going on between Ramkisun and Dashrath. All of a sudden accused Gandhi came there with *Lathi* and assaulted Ramkisun, who received head injury and Ramkisun also assaulted accused persons with *Lathi*. After this, he went to the house of the complainant and told them that their father has been beaten and he is lying on the ground, on which, the sons and daughter of Ramkisun went to the place of occurrence. When they reached there, they were also assaulted by accused persons. In the cross-examination, in Para-10, he has stated that when the assault began, Ramkisun was un-armed and when the accused persons started assaulting Ramkisun, he snatched *Lathi* of one accused and he also assaulted Julius. He cannot say that which part of body of Julius was hit by Ramkisun. In Para-11 of his cross-examination, he has denied that portion of his police statement in which he stated that at that time wife of Ramkisun and his sons had also come to place of occurrence holding *Lathis* in their hands.

(21) Ram Kumar has been examined as P.W.-13. In his examination-in-chief, he has deposed that he saw that Dashrath, Julius, Gandhi and Ramswaroop were abusing Ramkisun and



saying that they will assault him. After sometime, when Ramkisun was coming from the side of *Badi*, he was stopped by Julius, who gave assault to him. Ramkisun stopped assault and thereafter, he gave 3-4 *Lathi* blows to Julius. At that time, accused Gandhi also reached there and he assaulted Ramkisun on his head and thereafter other accused persons also assaulted him. In Para-6, he has deposed that when he saw that Ramkisun fell down on the ground due to assault, he along with Shiv Kumar went to the house of Ramkisun and told them that their father has been beaten, on which, his sons, Chotan, Vinod and wife Krishna Bai reached to the place of occurrence. Krishna Bai was assaulted by accused persons with *Lathi* and has received injury. Vinod had also received some injury. In Para-14, he has denied the suggestions that he had deposed before the police (Ex.-D/6) that sons and wife of Ramkisun had reached to the place of occurrence with *Dandas* in their hands. If such statement is recorded there, he cannot tell the reason for the same.

(22) If appreciate the evidence of these witnesses, it would appear that P.W.-1 Vinod Kumar, P.W.-2 Laxmi Prasad, P.W.-6 Ram Prasad, are the sons of the deceased and P.W.-10 Krishna Bai is the wife of the deceased. Laxmi Prasad, Vinod Kumar and Krishna Bai are injured witnesses, who have received some injuries. Apart from the said eye witnesses, the second set of eye witness is that of Shiv Kumar (P.W.-12) and Ram Kumar (P.W.-13). They are independent witnesses.

(23) So far as involvement of the accused persons are concerned, sons and wife have said about involvement of all the accused persons, whereas independent witness namely Ram Kumar (P.W.-13) has said about involvement of accused/appellants Gandhi and Julius, according to him the fatal blow to the deceased was given by accused Gandhi, where after he fell down on the ground but he also added that thereafter all accused persons started beating him but he has





not attributed specific role to any one of them so far as beating of the deceased is concerned. As far as P.W.-12 is concerned, he has also stated that the fatal blow to the deceased was given by accused Gandhi. These two witnesses have stated that after seeing all this, they had gone to the house of the deceased and narrated the story to their sons and wife. It has come in the evidence of Ram Prasad vide Para-10, that the place of occurrence was at a distance of 100 metres from their house and all these witnesses i.e. P.W.-1, P.W.-2, P.W.-6 and P.W.-10 say that after hearing this, they went to the place of occurrence and saw that the deceased was lying on the ground and the accused persons were beating him with *Lathi* and rod. A distance of 100 metres is measurable distance and if these two witnesses i.e. Shiv Kumar and Ram Kumar left the place of occurrence after assault was over as they have said, they must have taken some time to reach to the distance of 100 metres and thereafter, the other said eye witnesses i.e. the relative witnesses, they too must have also taken some time to reach the place of occurrence and it does not appear to be reasonable that in between this period, beating was going on and they could see that the deceased was being beaten by all the accused persons while he was lying on the ground. So far as evidence of their first sight regarding lying the deceased on the ground is concerned, there is no dispute about it. All the above related witnesses are saying that when they reached to the spot, the deceased was lying on the ground and they saw that he was being beaten by accused persons. The story set forth that they, in fact, witnessed beating of the deceased appear to be unreliable in the facts and circumstances and their evidence regarding assault of the deceased by all accused persons by means *Danda* and rod while he was lying on the ground cannot be accepted. In fact, as stated by P.W.-12 and P.W.-13 these relatives had reached to the place of occurrence after a short while when the deceased was already lying on the ground in injured condition and in this regard, there was a fight among the family member of the deceased and the accused



persons, in which, three of the relative witnesses namely Vinod Kumar (P.W.-1, son), Laxmi Prasad (P.W.-2, son) and Krishna Bai (P.W.-10, wife) received injuries.

(24) On appreciation of evidence, it clearly comes that the relative witnesses have not seen the occurrence of beating of deceased and they have reached to the place of occurrence after hearing that the deceased was assaulted by the accused persons that means when the assault was over and then the second phase of quarrel began in which the injuries were received by them. Therefore, the evidence regarding assault of the deceased is only that of Shiv Kumar (P.W.-12) and Ram Kumar (P.W.-13). According to them, two accused persons Gandhi and Julius had taken part in assault of the deceased, therefore, apart from these two accused persons, nobody can be held responsible for the murder of the deceased.

(25) For the foregoing reasons, the appeal partly succeeds. The conviction and sentence awarded to the accused Dashrath and Ramswaroop u/s 302/34 IPC are set aside. They are acquitted of the above charges. As per evidence of Para-4 of Laxmi Prasad, the conviction and sentences of Ramswaroop u/ss. 323/34 & 325/34 IPC are also set aside. He is acquitted of the charges framed under these Sections also. The conviction of Dashrath u/ss 323/34 and 325/34 IPC are maintained. The appeal filed on behalf of appellant Gandhi is dismissed. The appeal filed on behalf of appellant Julius is also dismissed as abated. The direction of running the sentences consecutively is set aside. Instead thereof, the sentences awarded to the convicted accused persons shall run concurrently.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge